

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

IN THE ST. JOSEPH Superior COURT

CAUSE NO. 71 006 -1012-PL- 00277

HOWARD PILTCH)
51740 Melwood Court)
South Bend, IN. 46628,)

and)

BARBARA NELSON-PILTCH)
51740 Melwood Court)
South Bend, IN. 46628,)

Plaintiffs,)

vs.)

FORD MOTOR COMPANY)
c/o its agent for service of process)
CT Corporation System)
251 E. Ohio Street, Suite 1100)
Indianapolis, Indiana 46204)

and)

MERCURY DIVISION OF FORD)
MOTOR COMPANY,)
c/o its agent for service of process)
CT Corporation System)
251 E. Ohio Street, Suite 1100)
Indianapolis, Indiana 46204)

Defendants.)

ST. JOSEPH COUNTY
CLERK

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SUPERIOR COURT

**COMPLAINT FOR DAMAGES ARISING OUT OF BREACH OF WARRANTY,
NEGLIGENCE, VIOLATION OF APPLICABLE PRODUCTS LIABILITY ACT AND
REQUEST FOR TRIAL BY JURY**

Plaintiffs, Howard Piltch and Barbara Nelson-Piltch, by their attorney of record, state as follows in support of this Complaint.



I. NATURE OF THE ACTION:

This is an action for damages sustained by Howard Piltch and Barbara Nelson-Piltch arising out of a one motor vehicle accident which occurred in Andover, Essex County, Massachusetts on February 4, 2007. At that date and time of the accident, Barbara Nelson-Piltch (Barbara) was the driver of a certain 2003 Mercury Mountaineer (VIN No. 4M2ZU86W83UJ08668) manufactured by defendants and put into the stream of commerce in the United States and beyond, and Howard Piltch (Howard) was the passenger. The Piltches were headed in a northerly direction of Abbot Road at about 10:00 o'clock a.m. The weather conditions were such that the roads were icy and treacherous. Barbara, as the driver, lost control of the Mercury Mountaineer due to the icy and treacherous road conditions and the Mercury Mountaineer collided with and into a tree causing substantial damages to the Mercury Mountaineer and, further, causing severe and permanent personal injuries to be sustained by Barbara as well as personal injuries sustained by Howard to a somewhat lesser degree.

At the moment of collision, the air bags in said Mercury Mountaineer failed to deploy thereby causing the personal injuries sustained by both of the Piltches to be much more severe than they otherwise would have been if the air bags had deployed as they are supposed to do in such an event. Both Piltches sustained substantial medical expenses in the care and the treatment of the personal injuries and, further, sustained other personal injuries consisting of, but not limited to the following: initial shock and trauma of the accident, pain and suffering, restricted mobility, a permanent partial impairment, loss of earnings, loss of consortium, and such other injuries and damages as may be revealed through investigation and discovery.

II. PARTIES:

3. The Piltches are residents of South Bend, St. Joseph County, Indiana and are citizens of the State of Indiana and have been citizens of the State of Indiana on a continuous basis prior to

the filing of this action.

4. Defendant Ford Motor Company is a foreign corporation (not an Indiana corporation) located in a state other than Indiana. Specifically, Ford Motor Company is a Delaware corporation with its principal place of business located at One American Road, Dearborn, Michigan 48126. Likewise, the Mercury Division of Ford Motor Company is a part of Ford Motor Company and, as such, is believed not to be a separate entity.

5. As alleged above, the Piltches sustained severe permanent injuries and have been otherwise damaged due to the collision with the Mercury Mountaineer, which the Piltches were traveling, in Essex County, Massachusetts on February 4, 2007. The failure of the air bags to deploy at the moment of the collision, as also alleged above, caused the injuries sustained by the Piltches to be much more severe than they otherwise would have been had the air bags had deployed as they were supposed to do.

III. THEORIES OF RECOVERY:

6. The failure of the air bags to deploy was caused by the following acts of negligence on the part of the defendants:

- A. Failure to design air bags and an air bag system in said Mercury Mountaineer that would successfully be activated and deployed at the moment of a collision or impact of said vehicle.
- B. In adequate quality control and standards in the design, manufacture, and installation of said air bag system in said automobile.
- C. Failure to recall or otherwise take collective action concerning that particular model of automobile in which the Piltches were situated at the time of the collision prior to the date of this accident which corrective action would have cured any problems or defects in the air bag system.
- D. A reduction in the quality of their life by virtue of sustaining such severe injuries.

E. Such other acts of negligence as may be revealed through investigation and discovery.

7. These defendants likewise have breached all applicable warranties concerning the air bag system in said Mercury Mountaineer automobile by virtue of the fact that any warranties, expressed and implied, that apply to the subject automobile have been breached by virtue of the failure of the air bag system to deploy or properly deploy at the moment of the collision herein.

8. Defendants are likewise liable to the Piltches under the Massachusetts Product Act/statutes by placing into the stream of commerce the subject Mercury Mountaineer automobile in a defective condition that placed the driver and occupants of said vehicle in an unreasonable risk of harm and injury if the air bags and air bag system, due to their defective nature, failed to deploy.

9. The Piltches are entitled to an award of compensatory damages in a sum sufficient to compensate them for all injuries and damages they have sustained and will sustain in the future.

WHEREFORE, Howard Piltch and Barbara Nelson-Piltch pray for a judgment of compensatory damages in a sum sufficient to compensate them for all injuries and damages sustained; for the cost of this action; and for all other fit and proper relief.

Respectfully submitted this 16th day of December, 2010.




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South Bend, Indiana 46617
Telephone: 574/288-6866
Attorney for Plaintiffs.

REQUEST FOR TRIAL BY JURY

The plaintiffs, Howard Piltch and Barbara Nelson-Piltch hereby request that this cause be tried by a jury.

Dated: December 16, 2010.



Donald E. Wertheimer, #1406-71